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Attorneys for Defendant  
**THE RAND GROUP, LLC**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Defendant The Rand Group, LLC (“Defendant”) answers plaintiff VBConversions, LLC’s (“Plaintiff”) Complaint as follows:

1           **A. SUMMARY OF THE ACTION**

2           1. Defendant admits that Plaintiff seeks damages and injunctive relief in the  
3 Complaint. Except as specifically admitted, Defendant denies the remaining  
4 allegations in Paragraph 1.

5           **B. JURISDICTION**

6           2. Defendant admits that the Complaint purports to set forth claims under  
7 the Federal Copyright Act, 17 U.S.C. §§101 *et seq.*, and that Plaintiff seeks to invoke  
8 jurisdiction of this Court under 28 U.S.C. § 1338(a). Otherwise, except as specifically  
9 admitted, Defendant denies the remaining allegations in Paragraph 2.

10          3. Defendant denies the allegations in Paragraph 3.

11          4. Defendant admits that Plaintiff seeks to establish venue through a forum  
12 selection clause in document they refer to as the End User License Agreement  
13 (“EULA”). Otherwise, except as specifically admitted, Defendant denies the  
14 remaining allegations in Paragraph 4, including Plaintiff’s allegations that Defendant  
15 affirmed the EULA.

16          **C. PARTIES**

17          5. Defendant lacks knowledge or information sufficient to form a belief as  
18 to the truth of the allegations in Paragraph 5 and therefore denies those allegations.

19          6. Defendant admits that it is a Texas limited liability company with a place  
20 of business located at 6575 West Loop South, Suite 215, Bellaire, Texas 77401.  
21 Otherwise, except as specifically admitted, Defendant denies the remaining  
22 allegations in Paragraph 6.

23          7. Defendant admits that it is a professional services firm that offers  
24 technology solutions for customers in various business sectors. This includes  
25 developing software to address the needs of its customers’ business systems.  
26 Otherwise, except as specifically admitted, Defendant denies the remaining  
27 allegations in Paragraph 7.

1       8.    Defendant admits that it employed Ricardo Gentile. Except as  
2 specifically admitted, Defendant denies the remaining allegations in Paragraph 8.

3       **D. GENERAL ALLEGATIONS**

4       9.    Defendant denies Plaintiff's allegation that Exhibit A includes any  
5 copyright registrations. Otherwise, Defendant lacks knowledge or information  
6 sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore  
7 denies those allegations on that basis.

8       10.   Defendant admits that Plaintiff has attached a document, which speaks  
9 for itself, as Exhibit B to the Complaint. Otherwise, Defendant lacks knowledge or  
10 information sufficient to form a belief as to the truth of the allegations in Paragraph 10  
11 and therefore denies those allegations on that basis.

12       11.   Defendant lacks knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in Paragraph 11 and therefore denies those allegations.

14       12.   Defendant lacks knowledge or information sufficient to form a belief as  
15 to the truth of the allegations in Paragraph 12 and therefore denies those allegations.

16       13.   Defendant lacks knowledge or information sufficient to form a belief as  
17 to the truth of the allegations in Paragraph 13 and therefore denies those allegations.

18       14.   Defendant lacks knowledge or information sufficient to form a belief as  
19 to the truth of the allegations in Paragraph 14 and therefore denies those allegations.

20       15.   Defendant denies the allegations of Paragraph 15. Defendant does not do  
21 any business or purchase or sell goods in the County of Los Angeles, State of  
22 California.

23       16.   Defendant denies that it is liable in any way (directly or vicariously) for  
24 the damages alleged in the Complaint. As to the remaining allegations in Paragraph  
25 16, Defendant lacks knowledge or information sufficient to form a belief as to the  
26 truth of those allegations and therefore denies them on that basis.<sup>1</sup>

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<sup>1</sup> The Complaint does not include paragraph 17.

18. Defendant denies the allegations in Paragraph 18.

2 **FIRST CLAIM FOR RELIEF: Violation of 17 U.S.C. § 106(1) & 501, et**  
3 **seq., Copyright Infringement.**

4 19. Defendant incorporates by reference its answers to Paragraphs 1-18  
5 above as if fully set forth herein.

6 20. Defendant lacks knowledge or information sufficient to form a belief as  
7 to the truth of the allegations in Paragraph 20 and therefore denies those allegations.

8 21. Defendant lacks knowledge or information sufficient to form a belief as  
9 to the truth of the allegations in Paragraph 21 and therefore denies those allegations.

10 22. Defendant lacks knowledge or information sufficient to form a belief as  
11 to the truth of the allegations in Paragraph 22 and therefore denies those allegations.

12 23. Defendant lacks knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in Paragraph 23 and therefore denies those allegations.

14 24. Defendant lacks knowledge or information sufficient to form a belief as  
15 to the truth of the allegations in Paragraph 24 and therefore denies those allegations.

16 25. Defendant denies the allegations in Paragraph 25.

17 26. Defendant denies the allegations in Paragraph 26.

18 27. Defendant denies that it has been unjustly enriched or profited through  
19 any misappropriation. As to the remaining allegations in Paragraph 27, Defendant  
20 lacks knowledge or information sufficient to form a belief as to the truth of those  
21 allegations and therefore denies them on that basis.

22 28. Defendant denies the allegations in Paragraph 28.

23 29. Defendant denies the allegations in Paragraph 29.

24 **SECOND CLAIM FOR RELIEF: *Vicarious Copyright Infringement***

25 30. Defendant incorporates by reference its answers to Paragraphs 1-29  
26 above as if fully set forth herein.

27 31. Defendant admits that it has the right and ability to oversee, govern,  
28 control, and direct its employees' actions when the actions are known to Defendant

1 and within the scope of their employment activities. Otherwise, except as specifically  
2 admitted, Defendant denies the allegations in Paragraph 31.

3 32. Defendant denies the allegations in Paragraph 32.

4 33. Defendant denies the allegations in Paragraph 33.

5 **THIRD CLAIM FOR RELIEF: *Contributory Copyright Infringement***

6 34. Defendant incorporates by reference its answers to Paragraphs 1-33  
7 above as if fully set forth herein.

8 35. Defendant denies the allegations in Paragraph 35.

9 36. Defendant denies the allegations in Paragraph 36.

10 37. Defendant denies the allegations in Paragraph 37.

11 **FOURTH CLAIM FOR RELIEF: *Violation of the Digital Millennium***

12 **Copyright Act (17 U.S.C. § 1201)**

13 38. Defendant incorporates by reference its answers to Paragraphs 1-37  
14 above as if fully set forth herein.

15 39. Defendant lacks knowledge or information sufficient to form a belief as  
16 to the truth of the allegations in Paragraph 39 and therefore denies those allegations.

17 40. Defendant lacks knowledge or information sufficient to form a belief as  
18 to the truth of the allegations in Paragraph 40 and therefore denies those allegations.

19 41. Defendant lacks knowledge or information sufficient to form a belief as  
20 to the truth of the allegations in Paragraph 41 and therefore denies those allegations.

21 42. Defendant denies the allegations in Paragraph 42.

22 43. Defendant denies the allegations in Paragraph 43.

23 **AFFIRMATIVE DEFENSES**

24 Without prejudice to the denials set forth above in its Answer, and without  
25 admitting any allegations of the Complaint that are not otherwise admitted above,  
26 Defendant avers and asserts the following Affirmative Defenses to the Complaint.  
27 Defendant reserves the right to amend its Answer with addition defenses as further  
28 information is obtained.

## FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by laches, estoppel, waiver, release, ratification, acquiescence, bad faith, consent, and other equitable defenses.

### THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by unclean hands.

## FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to Plaintiff's failure to mitigate damages.

## **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for unjust enrichment is barred by statute, 17 U.S.C. § 504.

## SIXTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery of its claims for infringement because it has failed to bring the claims within the statute of limitations.

## SEVENTH AFFIRMATIVE DEFENSE

Plaintiff neither has been nor is now the sole or exclusive owner or proprietor of the copyrights involved in this action. Plaintiff does not have the exclusive right to publish, print, copy and vend the items at issue herein.

## EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has not complied with the requirements of the Copyright Statute and has not, therefore, obtained or maintained any lawful or valid copyright in the designs involved in this action.

## NINTH AFFIRMATIVE DEFENSE

Plaintiff's designs lack originality. Each design is, and has long been, in the public domain. In addition, Plaintiff's designs lack originality because the elementary patterns are, and have long been, in the public domain.

## TENTH AFFIRMATIVE DEFENSE

Plaintiff's asserted copyright registrations are invalid.

## **ELEVENTH AFFIRMATIVE DEFENSE**

Even if Defendant has infringed on any of Plaintiff's alleged copyrights, such infringement was innocent.

## **TWELFTH AFFIRMATIVE DEFENSE**

To the extent that it exists, Plaintiff is enforcing the copyright to secure an exclusive right or limited monopoly not granted by the Copyright Office and contrary to public policy.

## THIRTEENTH AFFIRMATIVE DEFENSE

The acts alleged in the Complaint constitute a fair use of Plaintiff's product.

## FOURTEENTH AFFIRMATIVE DEFENSE

To the extent not otherwise included herein, Defendant raises all applicable defenses provided for by 17 U.S.C. §§ 101 – 1332.

**DEMAND FOR JURY TRIAL**

Under Fed. R. Civ. P. 38(b), Defendant demands a trial by jury of all issues so triable in this action.

## **PRAYER FOR RELIEF**

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

A. For dismissal of the Complaint with prejudice and that the relief requested in the Complaint be denied;

B. That the Court award Defendant costs of suit, including reasonable attorney's fees, under Fed. R. Civ. P. 68,17 U.S.C. § 505, or any other applicable rule or statute; and

C. That the Court grant Defendant such other and further relief as the Court deems just and proper.

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1 Dated: October 31, 2011

Respectfully submitted,

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By: /s/ Jon L. Rewinski  
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